

Message

From: Eastman, John [jeastman@chapman.edu]
Sent: 1/6/2021 11:45:28 PM
To: Jacob, Gregory F. EOP/OVP [Gregory.F.Jacob@ovp.eop.gov]
Subject: RE: [EXTERNAL] Pennsylvania letter

He's been so advised, as you know because you were on the phone when I did it. I should not discuss other conversations that I may or may not have had privately on that score with someone who is a client. But you know him – once he gets something in his head, it is hard to get him to change course.

When this is over, we should have a good bottle of wine over a nice dinner someplace.

John

From: Jacob, Gregory F. EOP/OVP <Gregory.F.Jacob@ovp.eop.gov>
Sent: Wednesday, January 6, 2021 4:29 PM
To: Eastman, John <jeastman@chapman.edu>
Subject: Re: [EXTERNAL] Pennsylvania letter

John,

Did you advise the President that in your professional judgment the Vice President DOES NOT have the power to decide things unilaterally? Because that was pushed publicly, repeatedly, by the President and by his surrogates this week. And without apparent legal correction.

I acknowledge that the final proposal as to actual actions to be taken by the Vice President in violation of the ECA that was retreated to last night was more modest. But the legal theory is not. And it does not appear that the President ever got the memo.

Respectfully,
Greg

Sent from my iPhone

On Jan 6, 2021, at 6:09 PM, Eastman, John <jeastman@chapman.edu> wrote:

Greg,

I appreciate tamping down the rhetoric. I will respond in kind.

With all due respect, the VP's statement today claimed the most aggressive position that had been discussed and rejected. "Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally." But we had given a much more limited option, merely to adjourn to allow state legislatures to continue their work. I remain of the view not only would that have been the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts.

Alas.

John

From: Jacob, Gregory F. EOP/OVP <Gregory.F.Jacob@ovp.eop.gov>
Sent: Wednesday, January 6, 2021 1:05 PM
To: Eastman, John <jeastman@chapman.edu>
Subject: Re: [EXTERNAL] Pennsylvania letter

I do apologize for that particular language, which was unbecoming of me, and reflective of a man whose wife and three young children are currently glued to news reports as I am moved about to locations where we will be safe from people, "mostly peaceful" as CNN might say, who believed with all their hearts the theory they were sold about the powers that could legitimately be exercised at the Capitol on this day. Please forgive me for that.

But the advice provided has, whether intended to or not, functioned as a serpent in the ear of the President of the United States, the most powerful office in the entire world. And here we are.

For the record, we were in the middle of an open, widely televised debate that was airing every single point that you gave members of Congress to make when all of this went down and we had to suspend.

I am not for a moment suggesting that you intended this result. But we were in fact giving you precisely the transparent debate that you suggest we were not. It was then up to you and the legal team to arm members with a case at least sufficient to convince a Senate that our own party controls. I'm not hearing that case at the moment, which I was anticipating with great interest (having previously reviewed many of the underlying filed materials), because the Senate floor has been abandoned.

Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts declined to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.

I do not begrudge academics debating the most far-flung theories. I love doing it myself, and I view the ferment of ideas as a good and helpful thing. But advising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and the bully pulpit that, in my judgment, was entirely absent here.

I'll say no more. And perhaps at some future Federalist Society Convention, we can more fully engage in the academic debate.

God bless.

Sent from my iPhone

On Jan 6, 2021, at 2:25 PM, Eastman, John <jeastman@chapman.edu> wrote:

My “bullshit” – seriously? You think you can’t adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The “siege” is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.

From: Jacob, Gregory F. EOP/OVP <Gregory.F.Jacob@ovp.eop.gov>
Sent: Wednesday, January 6, 2021 12:14 PM
To: Eastman, John <jeastman@chapman.edu>
Subject: Re: [EXTERNAL] Pennsylvania letter

John, very respectfully, I just don’t in the end believe that there is a single Justice on the United States Supreme Court, or a single judge on any of our Courts of Appeals, who is as “broad minded” as you when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years. They cannot be set aside except when in direct conflict with the Constitution that our revered Framers handed us. And very respectfully, I don’t think that a single one of those Framers would agree with your position either. Certainly, Judge Luttig has made clear he does not. And there is no reasonable argument that the Constitution directs or empowers the Vice President to set a procedure followed for 130 years before it has even been resorted to.

Lincoln suspended the writ when the body entrusted with that authority was out of session, and submitted it to them as soon as it returned. I understand your argument that several state legislatures were out of session. But the role for state legislatures has for our entire history ended at the time that electoral certificates are submitted to Congress. Congress has debated submissions, including competing submissions. It has never once referred them out to state legislatures to decide.

I respect your heart here. I share your concerns about what Democrats will do once in power. I want election integrity fixed. But I have run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal framework, it is a results oriented position that you would never support if attempted by the opposition, and essentially entirely made up.

And thanks to your bullshit, we are now under siege.

Sent from my iPhone

On Jan 6, 2021, at 1:33 PM, Eastman, John <jeastman@chapman.edu> wrote:

I’m sorry Greg, but this is small minded. You’re sticking with minor procedural statutes while the Constitution is being shredded. I gave you the Lincoln example yesterday. Here’s another. In the situation room at the White House during the first Iraq war, the Sec of Interior said the law required an environmental impact assessment before the President could order bombing of the Iraq oil fields. Technically true. But

nonsense. Luckily, Bush got statesmanship advice and ignored that statutory requirement.

Dr. John C. Eastman
Chapman University School of Law
(877) 855-3330 x2

(Sent from my mobile device. Please excuse any typos or brevity.)

On Jan 6, 2021, at 10:44 AM, Jacob, Gregory F. EOP/OVP
<Gregory.F.Jacob@ovp.eop.gov> wrote:

External Message

Thanks, John. Will call.

Is it unconstitutional for the ECA to direct that the members should do objections, at least in the first instance? Would the constitutional imperative you argue for not kick in only after that statutorily required mechanism has been applied, and failed to uphold the Constitution?

Sent from my iPhone

On Jan 5, 2021, at 9:32 PM, Eastman,
John <jeastman@chapman.edu> wrote:

Greg,

Good talk earlier tonight.

Major new development attached. This is huge, as it now looks like PA Legislature will vote to recertify its electors if Vice President Pence implements the plan we discussed.

Give me a call once you've had your sit-down with the VP and let me know where we stand.

Again, thank you.

John

<US Republican Leadership Letter.pdf>

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